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Something Happened: Descent into the Immigration Maelstrom; or Fear and Loathing in Fortress America: A Review of Alien Nation: Common Sense about America 's Immigration Disaster, by Peter Brimelow; Arguing Immigration: Are New Immigrants a Wealth of Diversity... Or a Crushing Burden?, by Nicolaus Mills; Legal Immigration: Setting Priorities, by the U.S. Commission on Immigration Reform; and US. Immigration Policy: Restoring Credibility--Executive Summary, U.S. Commission on Immigration Reform

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Book Review

Something Happened: Descent into the Immigration Maelstrom; or Fear and Loathing in Fortress America: A Review of *Alien Nation: Common Sense about America's Immigration Disaster*, Peter Brimelow, Random House, 1995, pp. 327; *Arguing Immigration: Are New Immigrants a Wealth of Diversity . . . Or a Crushing Burden?*, Nicolaus Mills, ed., Simon & Schuster, 1993, pp. 223; *Legal Immigration: Setting Priorities*, U.S. Commission on Immigration Reform, 1995, pp. 245; and *U.S. Immigration Policy: Restoring Credibility--Executive Summary*, U.S. Commission on Immigration Reform, 1994, pp. 39

REVIEWED BY JOHN SCANLAN*

> When, if ever, should race, ethnicity, and nationality be taken into consideration in formulating, or itself determining public policy? . . . In some policies, such as affirmative action, we monitor race and ethnicity to ensure equal opportunity. But certainly these factors should not be considered when deciding who we admit as immigrants . . . .[1]

* * *

The mass immigration so thoughtlessly triggered in 1965 risks making America an *alien nation*--not merely in the sense that the numbers of aliens in the nation are rising to levels last seen in the nineteenth century; not merely in the sense that America will become a freak among the world's nations because of the unprecedented

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1. Anna O. Law, *Race, Ethnicity and National Origins in Public Policy--When Should It Matter*, 10 GEO. IMMIGR. L.J. 71, 71 (1996). (Ms. Law is a Program Analyst for the U.S. Commission on Immigration Reform).

> demographic mutation it is inflicting on itself; not merely in the sense that Americans themselves will become alien to each other, requiring an increasingly strained government to arbitrate between them; but, ultimately, in the sense that Americans will no longer share in common what Abraham Lincoln called in his First Inaugural Address "*the mystic chords of memory, stretching from every battle field and patriot grave, to every living heart and hearth stone, all over this broad land . . .*"[2]

I.

As this review goes to press, U.S. immigration law is in a state of flux. A congressional conference committee is putting the finishing touches on an omnibus immigration reform bill, H.R. 2202--the Immigration in The National Interest Act of 1996--which, if passed, will establish a multitude of draconian border enforcement measures.[3] Action on H.R. 2202 follows two earlier pieces of 1996 legislation that significantly changed immigration law, making it considerably more restrictive and punitive. In August, Congress enacted its much-publicized Personal Responsibility and Work Opportunity

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2. PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER at xix (1995).

3. Failure among the majority Republicans to make the bill even harsher produced a party split that almost torpedoed the measure. At issue was the so-called Gallegly Amendment, which as originally written and passed by the House, would have permitted states to deny public education to illegal aliens of school age. On September 17, 1996, Rep. Gallegly submitted a "vastly watered-down version of his original measure" in the conference committee that satisfied his colleagues–although not Republican Presidential candidate Bob Dole. It now appears likely that H.R. 2202 will be enacted into law. *See* Eric Schmitt, *G.O.P. Seems About to Yield on Immigrants*, N.Y. TIMES, Sept. 18, 1996, at A11.

As it stands now, the bill, among other things, grants the government new authority to investigate and punish "alien smuggling"; streamlines deportation and exclusion proceedings; subjects aliens at the border to "expedited removal"; subjects other aliens currently afforded the right to full-fledged deportation hearings to more summary exclusion; subjects more aliens to detention pending determination of status; establishes special "removal procedures for alien terrorists"; enforces the "employer sanctions" provisions of earlier law; denies "illegal aliens" almost all public assistance benefits; attributes sponsors' income to "family-sponsored immigrants"; expands the statutory grounds for excludability and deportability; and provides for more immigration inspectors. Immigration in the National Interest Act of 1996, H.R. 2202, 104th Cong., 2d Sess. (1996) (as passed by the House of Representatives).

H.R. 2202 substantially duplicates some of the immigration-oriented welfare provisions enacted by Congress in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105. It also substantially duplicates some of the immigration-related antiterrorist provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

Reconciliation Act of 1996,[4] which effectively denies illegal aliens almost every form of federally-supported health and welfare benefit. Indeed, that act went further, and also denied many legally-admitted, permanent-resident aliens the right to obtain most forms of public assistance. Four months earlier, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).[5] Although significant parts of this act are directed at domestic acts of terrorism, it contains a number of immigration-related provisions. These include new impediments to asylum-seekers at the border, an extension of the criminal grounds for deportation and exclusion, new "star chamber" procedures for determining the immigration status of suspected terrorists, and the abolition of discretionary relief for aliens convicted of a broad range of crimes.

It is clear that immigration is a "hot button" issue today. Ever since California Governor Pete Wilson revived his sagging career by promoting Proposition 187,[6] politicians have gotten the message that there is a great deal of anti-immigrant sentiment loose in America, and that they can further their political ambitions by tapping into it. The name of the game right now is taking credit for every measure intended to "protect our borders," while castigating one's opponents for being too soft on the immigrant menace. Remarkably quickly, the nation's immigration discourse has begun to resemble that of the 1920s and its law has begun to move in the same direction.

Something happened. What was it? As a nation, we seem to be on an express train hurtling toward change. Where is that train coming from? Where is it going? Should we be trying to stop it? There are no simple answers. But the books I have chosen to review provide some clues. Some of those clues suggest that change is being directed by "politics-as-usual," the ordinary concerns about fairness and economic competition that always

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4. Pub. L. No. 104-193, 110 Stat. 2105.

5. Pub. L. No. 104-132, 110 Stat. 1214.

6. Wilson initially proposed *national* legislation, rather than a *state* initiative:

> California governor Pete Wilson also jumped on the immigration bandwagon in 1993, commanding national headlines in August when he proposed a set of sweeping new laws to deter illegal immigration. Under his plan Wilson would refuse citizenship to children born on U.S. soil to illegal immigrants, end the legal requirement that states pay for emergency medical care of illegal immigrants, deny public education to children of illegal immigrants, and manufacture a national identification card. Many considered his suggestions outlandish . . . . Nevertheless, Wilson's sagging approval ratings actually bounced upward for the first time in many months.

Linda Chavez, *Immigration Politics*, *in* ARGUING IMMIGRATION: ARE NEW IMMIGRANTS A WEALTH OF DIVERSITY . . . OR A CRUSHING BURDEN? 31, 32 (Nicolaus Mills ed., 1994) [hereinafter ARGUING IMMIGRATION].

animate proposals for more restrictive immigration legislation. Others hint at darker motives, suggesting that racism and fear have once again become powerful forces in the never-ending immigration debate.

II.

Impetus for some sort of change has been building for decades. Over the last thirty years, Congress has conducted thousands of hearings, considered hundreds of bills, and enacted dozens of immigration statutes. Some have dealt with tiny inconsistencies and gaps in the law. Others have dealt with major issues, such as large-scale refugee admissions, amnesty for millions of undocumented aliens, imposition of "employer sanctions" on those hiring the undocumented, and the radical restructuring of the preference system governing eligibility for immigrant visas. During the same period, presidents and presidential candidates have weighed in with their own suggestions about change, and have promoted the creation of numerous governmental, quasi-governmental, and citizens' advisory panels.

In the early and mid-1960s, most of those advocating change sought to eradicate discrimination based on national origin and race which had been part of the general immigration statute since 1924, had manifested itself in anti-Asian measures since the 1860s, and had greatly favored migrants from Northern and Western Europe.[7] After a brief period of dormancy, the immigration issue re-emerged in the middle 1970s. During the period from 1975 through 1986, two principal issues emerged. The first involved refugees; the second, the so-called "undocumented" population--aliens who had entered the United States surreptitiously or who had overstayed the terms of their nonimmigrant visas.

Some calling for immigration reform were anxious about the fate of the Indochinese, many of whom had fled Vietnam and Cambodia by boat, only to be turned away by possible safe-haven states, such as Malaysia and Thailand. Others were particularly concerned about the fate of Russian Jews, Haitian boat people, or those fleeing the violence of Central America. Whatever their

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7. The Immigration and Nationality Act Amendments of 1965 undid this pattern. Passed in the middle of the civil rights revolution, the 1965 law reflected the optimism of the Great Society and the views of a coalition of Jews, Catholics, and liberals who for years had fought against the biases of the 1924 law.

Nicolaus Mills, *Introduction: The Era of the Golden Venture*, *in* ARGUING IMMIGRATION, *supra* note 6, at 11, 16.

cause, the refugee advocates sought to regularize the procedures for bringing refugees into the United States, to put the right to seek political asylum on a stronger legal footing, to invest the asylum process with more fairness, and to facilitate the entry of more refugees. The Refugee Act of 1980 established a formal mechanism for all of these things, although a substantial divergence between law on the books and practical public policy quickly emerged.[8]

At approximately the same time Saigon fell, the Ford administration also began to study the practical and political problems occasioned by the influx of several million undocumented migrants, the great majority of whom hailed from Mexico and other nearby Latin American and Caribbean countries. During the Carter administration, the Select Commission on Immigration and Refugee Policy devoted much of its attention to the same issue, ultimately recommending that many of those here illegally be granted permission to remain, that the nation take steps to tighten its borders, and that new obligations be imposed on employers to help insure that they would hire only those legally authorized to work in the United States. After a dozen years of politicking, they appeared to achieve most of their goals with the passage of the Immigration Reform and Control Act of 1986 (IRCA).[9]

Over the last decade--with one curious exception--liberal voices generally have been drowned out by others seeking more restriction. The exception occurred in 1990, when Congress enacted the most sweeping revision of the Immigration and Nationality Act since 1965. The Immigration Act of 1990[10] expanded the grounds for excluding and deporting criminals from the United States. Otherwise, it was a fairly liberal measure. It removed or weakened several traditional provisions designed to keep communists and homosexuals out of the United States. It also greatly expanded the total number of immigrant visas granted each year, adding some 85,000 slots for those coming to perform labor in the United States, and some 50,000 "diversity" slots for aliens from under-represented countries in under-represented regions. Since 1990, however, the trend has been entirely in the opposite direction. The debate over Proposition 187, and its eventual passage, hastened the pace of

8. For a general account of the politics of refugee admissions immediately after the passage of the Refugee Act of 1980, see GIL LOESCHER & JOHN SCANLAN, CALCULATED KINDNESS: REFUGEES AND AMERICA'S HALF-OPENED DOOR, 1945-PRESENT, chs. 7-10 (1986).

9. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

10. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4987, *amended by* Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1743.

restriction. From 1993 on, almost every barometer forecast stormy weather ahead for immigrants.

III.

Any number of articles and books published during the last five or six years provide relatively benign, mainstream accounts that suggest some change in immigration policy was inevitable, and need not be regarded as either catastrophic or overly profound. Somewhat arbitrarily, I have chosen to comment briefly on three, all of which I believe are representative of "politics-as-usual."

The most conventional of the three are the two principal reports of the U.S. Commission on Immigration: *U.S. Immigration Policy: Restoring Credibility* (1994) and *Legal Immigration: Setting Priorities* (1995).[11] In 1990, shortly after Congress had enacted the most comprehensive rewrite of the Immigration and Nationality Act since 1965, President Bush and the 101st Congress acted jointly to create the U.S. Commission on Immigration Reform. Although most of the commissioners came from the private sector, all were politically well-connected--the commission's chair was the late Barbara Jordan, who had achieved fame as a freshman congresswoman from Texas during the Watergate hearings; its vice-chair was Lawrence Fuchs, who had served as staff director for the U.S. Select Commission on Immigration and Refugee Policy during the early 1980s. As befitted a quasi-governmental body entrusted with tending the flame of reform, it worked closely with both houses of Congress and with President Clinton's administration. Not surprisingly, its recommendations were remarkably cautious, balanced, and unadventurous.

The Jordan commission (as it was popularly called) continued to emphasize the many benefits it believed immigrants bring to America:

> Immigrants often create new businesses and other employment-generating activities that promote the renewal of city neighborhoods and commercial districts. Immigrants also can strengthen America's economic and political ties with other nations . . . . Properly regulated immigration further strengthens American scientific, literary, artistic

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11. U.S. COMM'N ON IMMIGRATION REFORM, U.S. IMMIGRATION POLICY: RESTORING CREDIBILITY (1994) [hereinafter RESTORING CREDIBILITY]; U.S. COMM'N ON IMMIGRATION REFORM, LEGAL IMMIGRATION: SETTING PRIORITIES (1995) [hereinafter SETTING PRIORITIES].

> and other cultural resources. It promotes family values and ties . . . . [A]n effective American immigration policy can demonstrate to other countries that religious and ethnic diversity are compatible with national civic unity in a democratic and free society.[12]

Yet, it also picked up on some of the anti-immigrant sentiment smoldering in late twentieth-century America. The cover of its 1995 report features two icons. The first is that old standby, the "lady with the lamp," a sketch of the head and raised right arm of the Statue of Liberty. Beneath that arm is the sketch of another symbol, "blind justice," holding a set of apothecary's scales in her left hand. The reverse side of the cover explains the symbolism:

> The *Statue of Liberty (Liberty Enlightening the World)*, a gift from France that was intended as a representation of republican ideals, has for more than a century been the preeminent symbol of immigration to the U. S. The blindfolded Statue of *Justice*, derived from the Greek goddess Themis, represents the order of society established by law, custom, and equity. These two symbols highlight the commission's view that a credible immigration policy must uphold both our immigration tradition and our commitment to the rule of law.[13]

Why wheel justice onto the scene? The answer, of course, was that the commission believed that immigration, while on balance good for America, was also capable of inflicting harm. Much of that harm derived from illegal immigration: "The Commission . . . [believes] that unlawful immigration is unacceptable. Enforcement efforts have not been effective in deterring unlawful immigration. This failure to develop effective strategies to control unlawful immigration has blurred the public perception of the distinction between legal and illegal immigrants."[14]

It was important to sharpen that distinction, the Commission believed, both to promote fairness and to avoid anti-immigrant backlash. Thus, it urged a policy that "is based on and supports broad national economic, social, and humanitarian interests, rather than the interests of those who would abuse our

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12. SETTING PRIORITIES, *supra* note 11, at i.
13. *Id.* at inside front cover (description of cover art available in soft cover edition only).
14. RESTORING CREDIBILITY, *supra* note 11, at ii.

laws."[15] It did so because failure to act decisively implicitly threatened our national ability to "maintain a civic culture based on shared values while accommodating the large and diverse population admitted through immigration policy."[16] Recommended actions included several of the measures recently enacted or still being considered by the 104th Congress, including stronger border enforcement,[17] specific measures aimed at alien smugglers,[18] more stringent screening of alien employment and tightening of employer sanctions,[19] and detention and removal of criminal aliens.[20]

In an immigration and border-control system as inefficient as our own, concerns about "unfairness" are understandable. But why was the Commission (which was staffed by a fair number of quite "liberal" members) so worried about backlash, and so willing to advocate a series of measures almost exclusively restrictionist and punitive? Part of the answer emerges in *Arguing Immigration: Are New Immigrants a Wealth of Diversity . . . Or a Crushing Burden?* (1994)--a collection of essays, all previously published in the early 1990s and edited by Nicolaus Mills. It features a fairly broad range of viewpoints, although many of its contributors--such as Nathan Glazier, Linda Chavez, Francis Fukuyama, George Borjas, and Peggy Noonan--are closely tied to the *National Review* and a particular brand of neo-conservative Republican politics. As its title promises, the Mills collection provides a useful summary of arguments for and against a generous immigration policy.[21] These arguments tend to fall into three broad categories: arguments about the *economic benefits* that new migrants bring to America, arguments about the *cost of providing welfare benefits* to such migrants, and arguments about the *cultural effects* of continuing to admit large numbers of immigrants each year, most of whom are Hispanic or Asian, and most of whom settle in a few metropolitan areas.

Predictably, the first two types of argument tend to merge. As predictably, their proponents are capable of reaching very different results. For example, Jaclyn Fierman concedes that "Washington can and must improve its efforts

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15. *Id.*
16. *Id.* at iii.
17. *Id.* at v-xi.
18. *Id.* at xi-xii.
19. *Id.* at xii-xxi.
20. *Id.* at xxvii-xxviii.
21. Some of these arguments were developed considerably more fully in the original article--or in a book on the same topic by the same author.

to keep out the truly dangerous."[22] However, she argues that "[t]here's no economic case for trimming back the current target of roughly 700,000 authorized immigrants a year, some 500,000 of whom are members of families being reunited. If anything, the United States should welcome *more* newcomers from especially desirable groups--namely, the gifted, the ambitious, and the rich."[23] Peter Francese, in a piece entitled *Aging America Needs Foreign Blood*, makes a similar point, although he includes among his category of desirable groups those capable of emptying bedpans.[24] On the other hand, George Borjas, in a piece entitled *Tired, Poor, and on Welfare*, argues that when we count not only direct welfare expenditures but also the cost of "public goods," "immigrants impose a $16 billion annual burden on native taxpayers."[25] Nick Ervin considers another sort of "public good"--preservation of the environment--and concludes "that we do neither our homeland nor our planet (including its human members) a favor by acting as a continuing sponge for immigrants from other lands."[26]

Implicit in these broad utilitarian-cum-economic arguments is an ahistorical emphasis on the present which goes even further than the U.S. Commission on Immigration Reform in ignoring the traditional view that America is, when all is said and done, a "nation of immigrants." To be sure, some of the authors in the Mills text look back with a certain nostalgia to the "melting pot" ideal, or speak of the continual renewal of American civic culture inspired by new generations of immigrants. Mills himself recites St. John de Crèvecour's famous question, "What then is the American, this new man?" and his almost equally famous answer, "Here individuals of all nations are melted into a new race of men, whose labours and posterity will one day cause great changes in the world."[27] Peggy Noonan asserts, "when immigrants arrive, some kind of magic happens: they do extraordinary things, things they couldn't do at home."[28] Richard Rodriguez links the work habits of

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22. Jaclyn Fierman, *Is Immigration Hurting the U.S.?*, *in* ARGUING IMMIGRATION, *supra* note 6, at 67, 68.

23. *Id.*

24. Peter Francese, *Aging America Needs Foreign Blood*, *in* ARGUING IMMIGRATION, *supra* note 6, at 85, 87.

25. George J. Borjas, *Tired, Poor, on Welfare*, *in* ARGUING IMMIGRATION, *supra* note 6, at 76, 77.

26. Nick Ervin, *Immigration and the Environment*, *in* ARGUING IMMIGRATION, *supra* note 6 at 90, 93.

27. Mills, *supra* note 7, at 11, 12.

28. Peggy Noonan, *Why the World Comes Here*, *in* ARGUING IMMIGRATION, *supra* note 6, at 176, 178.

contemporary Mexican immigrants to those of Asians resented in nineteenth century America "because they work[ed] too hard."[29] But Linda Chavez tells us that "[t]he immigrant landscape today is very different than it was at the turn of the century. Yesteryear's 'huddled masses, yearning to breathe free' were not thrust into the bosom of the welfare state."[30] And in his introduction, Mills notes:

> In the America of the 1990s, nobody talks about melting pots very much . . . . When we speak of national unity, our most hopeful figure of speech is usually that of a mosaic, and for many, even a mosaic seems too optimistic. We no longer have the social confidence that as recently as 1984 allowed audiences to delight in a film like *Moscow on the Hudson*, in which Robin Williams, playing a Russian refugee, finds himself sheltered by a black family, aided by a Cuban lawyer, and in love with an Italian immigrant.[31]

Generally resistant to sentiment but not to numbers, the authors Mills excerpts are more likely than not to favor immigration on economic grounds. Many, in fact, seem more committed to the tradition of relatively open borders than do the members of the U.S. Commission on Immigration Reform. While most are culturally conservative, the majority are also economic liberals. And if one of the doctrines of economic liberalism is that an unfettered marketplace insures personal freedom, one of its imperatives is "open borders." Michael Walzer has summarized the argument well:

> It was a common argument in classical political economy that national territory should be as "indifferent" as local space. The same writers who defended free trade in the nineteenth century also defended unrestricted immigration. They argued for perfect freedom of contract, without any political restraint. International society, they thought, should take shape as a world of neighborhoods, with individuals moving freely about, seeking private advancement.[32]

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29. Richard Rodriguez, *Closed Doors*, *in* ARGUING IMMIGRATION, *supra* note 6, at 143, 145.
30. Chavez, *in* ARGUING IMMIGRATION, *supra* note 6 at 31, 35.
31. Mills, *supra* note 7, at 11, 12-13.
32. MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 37 (1983).

Yet, the Mills text--like those published by the U.S. Commission on Immigration Reform--also contains arguments about *culture*. And as Mills notes, "the cultural arguments about immigration . . . have their roots in race. [T]he engine that drives them is the issue of diversity and the fear that American culture is fragmenting beyond repair."[33] In a brief, cautionary essay, entitled *On the Backs of Blacks*, Toni Morrison writes of "race talk as a bonding mechanism" which pervades American culture, creating a larger and more unified dominant class by insisting that blacks constitute an entirely separate and subordinate *other*.[34] Reflecting (or perhaps anticipating) the U.S. Commission on Immigration Reform's anxiety about "maintain[ing] a civic culture based on shared values," Francis Fukuyama writes that while Patrick Buchanan is correct in believing that cultural wars exist, "the vast majority of the non-European immigrants who have come into this country in the past couple of decades are not the enemy."[35] For many who have advocated or written about immigration reform in recent years, this is a strong article of faith. Yet just as race is the well-spring of cultural arguments, so it is the wellspring of fears about the rhetoric and pace of contemporary restrictionism.

IV.

Eighty years ago, Madison Grant published the first edition of his *magnum opus*, *The Passing of the Great Race, or The Racial Basis of European History* (1916). The book is a compendium of early twentieth-century scientific misinformation and overt racist prejudice. Grant divides humanity on the basis of physical characteristics. The Nordic peoples, who are physically distinct not only from African and Asian peoples but also from other Europeans, stand at the apex of human development. For Grant,

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33. Mills, *supra* note 7, at 11, 23.

34. Toni Morrison, *On the Backs of Blacks, in* ARGUING IMMIGRATION, *supra* note 6, at 97, 99. Morrison defines "race talk" as "the explicit insertion into everyday life of racial signs and symbols that have no meaning other than pressing African Americans to the lowest level of the racial hierarchy." *Id.* at 97.

35. Francis Fukuyama, *Immigrants and Family Values, in* ARGUING IMMIGRATION, *supra* note 6, at 151. As his title indicates, Fukuyama believes that such wars ought to be fought about political or social ideals. But he rejects the notion that theories of innate racial superiority can constitute those ideals. *See* Francis Fukuyama, *Culture Vulture*, NATIONAL REVIEW, May 1, 1995, at 77 (reviewing PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995)) [hereinafter *Culture Vulture*].

I quote Fukuyama more extensively below.

> Races vary intellectually and morally just as they do physically. Moral, intellectual and spiritual attributes are as persistent as physical characters and are transmitted substantially unchanged from generation to generation. These moral and physical characteristics are not limited to one race but given traits do occur with more frequency in one race than in another. Each race differs in the relative proportion of what we may term good and bad strains . . . .[36]

Grant believed that the United States, to its great benefit, had been heavily populated with Nordic people during the colonial period. For "[t]he Nordics are, all over the world, a race of soldiers, sailors, adventurers and explorers, but above all, of rulers, organizers, and aristocrats."[37]

Grant was the most prominent of a number of "thinkers" who "undoubtedly had some influence in determining the immigration policy" of the 1920s.[38] Writing in 1926, Clifford Kirkpatrick observed:

> According to the epic of Grant and others, there arose in Europe a master race, tall of stature, blond of hair, blue of eye and long of head, whose members embodied most of the human virtues and were destined above other races to inherit the earth. . . . Men like Grant, Gould, Burr, and Osborne have their reactions to the immigration problem dominated to a great extent by ideas of racial superiority.[39]

In his "Introduction to the Fourth Edition," Grant took considerable credit for shaping American immigration politics:

> "The Passing of the Great Race," in its original form, was designed by the author to rouse his fellow-Americans to the overwhelming

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36. MADISON GRANT, THE PASSING OF THE GREAT RACE, OR THE RACIAL BASIS OF EUROPEAN HISTORY 226 (4th ed. 1922).

37. *Id.* at 228. These qualities, he adds, are "in sharp contrast to the essentially peasant and democratic character of the Alpines." *Id.*

The Nordics, he claims, have other traits as well. Although not particularly proficient in art, they are also the masters of "literature and . . . scientific research and discovery . . . ." *Id.* at 229.

38. CLIFFORD KIRKPATRICK, INTELLIGENCE AND IMMIGRATION 112 (1926).

39. *Id* (citations omitted). Kirkpatrick was no liberal. He believed that the quotas in effect in 1924 very roughly tracked the average intelligence of favored and disfavored immigrant groups. He quarreled with the harmful effect of over-generalization brought about by racial categorization, particularly as it affected the opportunities of specific intending migrants, not with general conclusions that ranked the *average* performances of races or nationalities on standardized intelligence tests. *See id. at* 105-116.

> importance of race and to the folly of the 'Melting Pot' theory, even at the expense of bitter controversy. This purpose has been accomplished thoroughly, and one of the most far-reaching effects of the doctrines enunciated in this volume and in the discussions that followed its publication was the decision of the Congress of the United States to adopt discriminatory and restrictive measures against the immigration of undesirable races and peoples.[40]

The legislation Grant referred to was the Immigration Act of 1921, which adopted a "National Origins Quota" (NOQ) on an "emergency" basis for three years.[41] That quota was made "permanent" in 1924, adjusted in 1929,[42] and retained with only minor adjustments when Congress wrote a completely new Immigration Code and enacted the Immigration and Nationality Act of 1952.[43]

Nearly two years ago, Peter Brimelow published *Alien Nation: Common Sense About America's Immigration Disaster*.[44] His purpose was as radical as Grant's: retreat from the "liberal" provisions of the 1965 Immigration Amendments, which threaten to sink the ship of State.[45] First principles, he claimed, demand a change of policy:

> Let's start with a definition. What is a "nation-state"? It is *the political expression of a nation*. And what is a "nation"? It is an *ethnocultural community*--an interlacing of ethnicity and culture. Invariably, it speaks one language.
>
> In recent years in the United States, there has been a tendency to emphasize the cultural part of the equation. But this is to miss a critical point. The word "nation" is derived from the Latin *nescare*, to be born. It intrinsically implies a link by blood. A nation in a real

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40. GRANT, *supra* note 36, at xxviii.

41. Act of May 19, 1921, ch. 8, 42 Stat. 5.

42. AMERICAN IMMIGRATION POLICY--A REAPPRAISAL 25 (William S. Bernard et al. eds., 1950). For an analysis of the working of the NOQ in its various legislative embodiments, see *id.* at 24-29.

43. 8 U.S.C. §§ 1101, 1524 (1970 & Supp. 1996).

44. PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER (1995).

45. BRIMELOW, *supra* note 44, at 18. Brimelow is not a gifted writer. He struggles with metaphors. Here is the way he describes the watery catastrophe threatening America: "The 1965 Immigration Act did not open the immigration floodgates: it opened the immigration scuttles--the influx is very substantial, but it spurts lopsidedly from a remarkably small number of countries, just as when some of the scuttles are opened in one side of a ship. Which is why the United States is now developing an ethnic list--and may eventually capsize." *Id.*

> sense is an extended family. The merging process by which all nations are created is not merely cultural, but to a considerable extent biological, through intermarriage.[46]

The "merging process" is failing, he argues, because too many Asians and too many Latin Americans are entering the United States too quickly.[47] Somehow, their numbers are interfering with "family unity."[48] It is time, he urges--employing another unfortunate metaphor--to "pause for digestion."[49]

"Family" is always a troublesome noun when used to describe something as ungainly and diverse as a nation-state. But it is particularly problematic when used by Brimelow. What, we might ask, does "a link by blood" mean?

In October, 1993, Virginia Postrel, the editor of *Reason* magazine, accused Brimelow of being a racist because "he . . . defines authentic Americans not by their values or actions but by . . . blood. This is nonsense and, though I hate to use the term, profoundly un-American."[50] Brimelow responded:

> Thus Virginia, like many modern American intellectuals, is just unable to handle a plain historical fact: that the American nation has always had a specific ethnic core. And that core has been white.
>
> A nation, of course, is an interlacing of ethnicity and culture. Individuals of any ethnicity or race might be able to acculturate to a national community. And the American national community has certainly been unusually assimilative. But nevertheless, the massive ethnic and racial transformation that public policy is now inflicting on America is totally new--and in terms of how Americans have traditionally viewed themselves, quite revolutionary. Pointing out this reality may be embarrassing to starry-eyed immigration enthusiasts who know no history. But it cannot reasonably be shouted down as "racist." Or "un-American."[51]

But why *can't* it be "shouted down as 'racist?'" Brimelow seems to recognize that "intermarriage" happens naturally--and he does not explicitly

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46. BRIMELOW, *supra* note 44, at 203.
47. *Id.* at 271-273.
48. *Id.* at 80.
49. *Id.* at 19.
50. *Id.* at 10 (quoting Virginia I. Postrel, *Ms. Postrel Replies*, REASON, Oct. 1993, at 12, 13).
51. BRIMELOW, *supra* note 44, at 10.

propose that the United States again adopt the sort of anti-miscegenation statutes which the Supreme Court struck down in *Loving v. Virginia*.[52] Yet, he does not suggest that newcomers from every part of the globe solve the problem of estrangement by emulating the French who settled Quebec, or the Blacks and Portugese who settled Brazil, or the Spanish who settled the remainder of Latin America, and intermarried indiscriminately with the established American population--a population that already is as racially and ethnically diverse as any in the world. Instead, the whole tenor of his book is that such unions are, if not strictly "unnatural," then at least highly unlikely, given the profound differences between people that he believes are self-evident.

Again, he employs metaphor to highlight difference. In what surely must be one of the most curious (and psychologically revealing) passages published by a mainline press in a very long time, Brimelow tells us:

> Current immigration policy offers another parallel with New York. Just as when you leave Park Avenue and descend into the subway, when you enter the INS waiting rooms you find yourself in an underworld that is not just teeming but is also almost entirely colored.
>
> . . .
>
> You have to be totally incurious not to wonder: where do all these people get off and come to the surface?
>
> That is: what impact will they all have on America?[53]

Elsewhere in the book, the subterranean imagery disappears. But the frightening vision of violent black men hurtling through white-occupied cities in trains is retained. Thus, in defending Patrick Buchanan's preference for English settlers over "Zulus," Brimelow describes a spate of murders on black commuter trains from Johannesburg.[54] In another passage, he recounts the story of Colin Ferguson, an alien from Jamaica who overstayed his visa, and wouldn't you know it, "open[ed] fire on commuters on New York's Long Island Rail Road, killing six and wounding 19!!!"[55]

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52. 388 U.S. 1 (1967).
53. BRIMELOW, *supra* note 44, at 28.
54. *Id.* at 109.
55. *Id.* at 6.

If Brimelow had a daughter, you can imagine him counseling her to take a cab. These are not the sort of folks you would expect him to want her to share a seat with, much less marry. Yet it is precisely this sort of person, Brimelow implies, who are coming to America in unprecedented numbers. If the recent immigrants are not generally black, they are not white either. Indeed, a substantial percentage are Hispanic--a group which Brimelow invests with its own *racial* identity.[56] In less than two generations, Brimelow suggests, non-Hispanic "whites" are likely to become a minority in the United States.[57] As that day draws nigh, "minorities" will continue to amass political and economic power, and will use that power to take advantage of his American-born child, "a white male with blue eyes and blond hair."[58] "[P]ublic policy now discriminates against him. The sheer size of the so-called 'protected classes' that are now politically favored, such as Hispanics, will be a matter of vital importance as long as he lives. And their size is basically determined by immigration."[59]

But Brimelow's principal fear appears to be genetic, not economic, driven by fantasies of inherited violence and inherited wisdom. Otherwise, how could a British chap like himself merit the same opportunities for American citizenship as his blond-haired, blue-eyed, American-born son--and better opportunities than the black- and brown-skinned people he occasionally encounters in immigration offices? How could he, a foreigner, claim a special ability to respond to Lincoln's "*mystic chords of memory*"?

The matter is a puzzlement to his conservative friends. Francis Fukuyama puts it this way:

> [Brimelow] explains the content of "American" national identity in old-fashioned, blood-and-soil racial terms: it is the culture of "white" (i.e., European-origin) Americans.
>
> But who are "white" Americans? The U.S. is the only country in the world that thinks there is a cultural group called "whites." In

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56. *Id.* at 68. He does so because he believes, like those who crafted the National Origins Quota system in the 1920s, that "race" is an inherited and apparently immutable characteristic: "some in the 'Hispanic' category are clearly of European stock--for example most, but not all, of the Cubans. In 1990, just less than half of all Hispanics told the trusting Census Bureau that they were white. Since four-fifths originate in Mexico or Central America, where the populations are overwhelmingly mestizo, this seems exaggerated." *Id.* at 67.

57. *See id.* at 63-66.

58. *Id.* at 11.

59. *Id.*

> Europe there are only Germans, Italians, Poles, Magyars, Croats, and the like. (There are also some limp-wristed "Europeans," but I'm sure Mr. Brimelow doesn't take them seriously.) The strange category of "white" exists in the U.S. only because the original Protestant Anglo-Saxon settlers of the country took in, successively, other Protestants from Central and Northern Europe, then a large group of Catholic Irish, and then, in the great immigration wave at the turn of the century, an extremely large group of Catholic and Jewish immigrants from southern Italy, the Austro-Hungarian Empire, Russia, and elsewhere. Though this is not always apparent today, the degree of cultural and perceived racial distance between these groups was every bit as great at the time they arrived here as the distance between the median Anglo of today (named Pixel or Steinberg) and a recent Mexican immigrant. Hence, the common American culture that both Mr. Brimelow and I find so important is actually a sectarian Protestant Anglo-Saxon culture that was somehow detached from its ethnic roots, mixed with universalistic Lockean-liberal principles, and adopted by the non-Anglo-Saxon, non-Protestant immigrants from Europe who arrived subsequently, and who then intermarried to such an extent that it is no longer meaningful to try to determine what proportion of the country is descended from Italians, Swedes, and the like. And the rate of intermarriage between natives and recent non-European immigrants is so high that it makes as little sense to worry about the U.S. becoming a "majority non-white" country by the middle of the next century as it did to worry about it becoming majority "non-Anglo-Saxon" in the last. Yet Brimelow for some reason insists on describing in racial and ethnic terms a national identity that can only be properly characterized in cultural terms.[60]

For those who are not Mr. Brimelow's friends--who have not met him and do not intend to--the matter is far less mysterious--and far more dangerous. Brimelow, reaching into the depths of his own personality, has tapped into the well of fear and loathing that, either as a threat or as a veiled but fully realized political force, appears to animate much of contemporary American immigration policymaking.

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60. *Culture Vulture*, *supra* note 35.